

Item SP04-16 Response Form

Title: **Judges on Leave While Running for Other Public Office** (adopt Canon 6H of the California Code of Judicial Ethics)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

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DEADLINE FOR COMMENT: 5:00 P.M Friday, October 1, 2004

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

<i>Circulation for comment does not imply endorsement by the California Supreme Court.</i>
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Title	Judges on Leave While Running for Other Public Office (adopt Canon 6H of the California Code of Judicial Ethics)
Summary	This proposed canon and commentary provides that the Code of Judicial Ethics applies to judges who are on leave while running for nonjudicial office. The new canon would also identify certain exceptions.
Source	Supreme Court Advisory Committee on the Code of Judicial Ethics
Staff	Mark Jacobson, 415-865-7898
Discussion	<p>A superior court judge is constitutionally permitted to take a leave of absence without pay to run for election to “other public office.” (Cal. Const., art. VI, § 17.) Currently, nothing in the Code of Judicial Ethics indicates whether the code applies to judges while they are on leave pursuant to this constitutional provision.</p> <p>The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended to the Supreme Court that it circulate for public comment a proposed canon providing that judges on such leave are subject to the code, with certain exceptions. The committee noted that judges on leave still are members of the judiciary while they are on leave and may return to the bench. As such, they are in a position to affect the integrity of the judiciary negatively and to bring it into disrepute if they violate the canons while running for other public office. The committee observed that rule 6.151 of the California Rules of Court, which governs judicial sabbaticals, provides that judges on sabbatical leave are subject to the code. The proposed canon is consistent with rule 6.151.</p> <p>As proposed, the canon sets forth some narrowly tailored exceptions to the general applicability of the code, exempting canons that are directly implicated when a judge runs for nonjudicial office. For example, canon 5 states that a judge “shall refrain from inappropriate political activity.” In addition to this general prohibition against political activity, canon 5D states that judges “shall not engage in any political activity, other than in relation to measures concerning the improvement of the law, the legal system, or the administration of justice.” A judge would be unable to run an effective campaign for nonjudicial office if he or she were constrained by the restrictions in canon 5. Therefore, the proposed canon contains an exception for canon 5. To avoid any confusion about the status or permissibility of campaign contributions, the proposed canon specifies that permissible political activity related to running for other public office includes soliciting and accepting campaign contributions for the nonjudicial office.</p>

The proposed canon also contains exceptions for:

- Canon 2B(2)—lending the prestige of judicial office to advance the judge’s personal interest;
- Canon 2B(4)—using the judicial title in written communication intended to advance the judge’s personal interest; and
- Canon 4C(1)—appearing at public hearings.

The committee concluded that a judge could not run an effective campaign if he or she were subject to these restrictions. For example, absent these exceptions, a judge running for nonjudicial office could run afoul of canons 2B(2) and 2B(4) simply by referring to the fact that he or she is a judge. Likewise, a judge who is a candidate for another public office could violate canon 4C(1) by appearing at a public hearing about an issue that is of interest in the campaign and is unrelated to the law.

To ensure that the exceptions are narrowly tailored, the proposed exceptions contain the phrase “insofar as the conduct relates to the campaign for public office for which the judge is on leave.”

Because the proposed canon refers to a “judge who is on leave while running for other public office,” the committee expressed concern the canon could be interpreted to mean the exceptions do not apply to candidates for *judicial* office. The committee agreed the prohibitions in canon 5 apply to incumbent judges involved in judicial election campaigns, but it is implicit that these judges may use the prestige of judicial office (canon 2B(2)) and the judicial title (canon 2B(4)) in their campaigns. To avoid any misinterpretation of the proposed canon and to preserve the distinction between canon 5 on the one hand, and canons 2B(2) and 2B(4) on the other, the proposed canon includes the following sentence in the commentary: “Conduct during elections for judicial office is governed by Canon 5.”

The text of the proposed new canon is attached.

Attachment

Canon 6H of the California Code of Judicial Ethics would be adopted effective January 1, 2005, to read:

H. Judges on Leave Running for Other Public Office

A judge who is on leave while running for other public office pursuant to article VI, section 17 of the California Constitution shall comply with all provisions of this Code, except for the following, insofar as the conduct relates to the campaign for public office for which the judge is on leave:

2B(2)—Lending the prestige of judicial office to advance the judge’s personal interest

2B(4)—Using the judicial title in written communications intended to advance the judge’s personal interest

4C(1)—Appearing at public hearings

5—Engaging in political activity (including soliciting and accepting campaign contributions for the other public office)

ADVISORY COMMITTEE COMMENTARY:

These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this Code will become applicable at the time a judge resumes his or her position as a judge.

Conduct during elections for judicial office is governed by Canon 5.